



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,199	02/26/2002	Hai Trieu	4002-2950/PC464.00	5676
52196	7590	07/19/2006	EXAMINER	
KRIEG DEVAULT LLP ONE INDIANA SQUARE, SUITE 2800 INDIANAPOLIS, IN 46204-2709			PHILOGENE, PEDRO	
			ART UNIT	PAPER NUMBER
			3733	

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/083,199

Applicant(s)

TRIEU ET AL.

Examiner

Pedro Philogene

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21,23-31,33-38 and 78-99 is/are pending in the application.
- 4a) Of the above claim(s) 15-21,23-31,34,36,37 and 89 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14,33,35,38 and 78-88,90-99 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-14, 33,35,38,78-88,90 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant fails to disclose a body having a length extending "extradiscally" to a second vertebral body. Although applicant is claiming "extradiscally" nowhere in the specification is an explanation of the word "extradiscally" is given. Since applicant is introducing the word "extradiscally" to overcome a rejection and since the word "extradiscally" was never presented in the original claims and specification, it is considered as new matter.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-14, 33,35,38,78-88,90-99 are rejected under 35 U.S.C. 102(e) as being anticipated by Carl et al (6,607,530).

With respect to claims 1, 78, 91, Carl et al disclose a spine stabilization system comprising an implant (160) having first and second ends, at least a portion of one of the first and second ends structured for positioning in use in a channel formed in a first vertebral body; and at least one anchor (400) sized to be embedded within the first vertebral body without protruding from the first vertebral body; as set forth in column 10, lines 18-25, column 13, lines 64-67, at least one of a first end and second end of the implant is angled relative to the portion for positioning into the first vertebral body in the tunnel; as best seen in FIGS.6a-b; including means (the curvature in FIGS.6,a-b) for conforming to a first vertebral body. The at least one anchor and the one of the first and second ends being configured to engage one another in the tunnel with the means for conforming in contact with the first vertebral body; as best seen in FIGS.6,a-b. The implant including a body having a length and structure to extend from the tunnel "extradiscally" to a second vertebral body or to conform to the first vertebral body outside the tunnel; as set forth in column 13, lines 14-17, also as best seen in FIG.10.

With respect to claims 2-14, 33, 35, 38,79-88, 90,92-99, Carl et al discloses all the limitations, as set forth in column 10, lines 18-25, column 11, lines 26-67, column 13, lines 8-17, lines 64-67, column 14, lines 35-48.

### ***Response to Amendment***

Applicant's arguments filed 5/8/06 have been fully considered but they are not persuasive. Applicant stated that Carl et al did not teach an implant including a body

having a length and structure to extend from the tunnel "extradiscally" to a second vertebral body. First, applicant's attention is directed to the 112 rejection above. Second, as understood, Carl et al disclose all the limitations, as claimed by applicant. For example, in column 13, lines 14-17, and FIG.10, Carl et al disclose that "the implant can be arranged so as to include a biting or expansion element(s) that can be driven out in a lateral direction so as to engage the bony structure of the vertebrae", therefore, the imp[lant conforms to the vertebral body outside the tunnel. As to applicant's argument concerning claims 2-14, 33,35,38, that "wherein at least one anchor extends along and threadingly engages said one of said first and second ends of said, the screw (400) of Carl et al threadingly engages the ends of the implants; as set forth in column 13, lines 10-13. As to the end portion of the implant being relatively angled to the other one, applicant's attention is directed to FIG.10. As to the manner in which the anchor extends in relation to the implant. Applicant is reminded that the manner in which a device is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus satisfying the claimed structural limitations. As to claim 97, applicant's attention is directed to FIG.10.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene  
July 11, 2006

  
PEDRO PHILOGÈNE  
PRIMARY EXAMINER